

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN**

In the Matter of:

ARK LABORATORY, LLC,

Debtor.

Case No. 23-43403-mlo

Chapter 11

Hon, Maria L. Oxholm

**MOTION OF DEBTOR TO REJECT CERTAIN EXECUTORY CONTRACTS
AND UNEXPIRED LEASES, AND FOR RELATED RELIEF**

Debtor states:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested include Bankruptcy Code sections 105 and 365.

BACKGROUND

3. The above-captioned proceedings were commenced by the filing of a voluntary Chapter 11 Petition by Debtor on April 12, 2023 (the “Commencement Date”). The Debtor is authorized to continue to operate its business and manage its property as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

4. Debtor operates a medical laboratory and has filed a motion to sell substantially all of its assets to Auxo Investment Partners, LLC (“Auxo” and “Purchaser”), subject to higher and better bids (the “Sale Motion”) at ECF No. 145.

RELIEF REQUESTED

5. By this Motion, the Debtor requests authority pursuant to Section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, to reject certain of Debtor’s prepetition executory contracts and unexpired leases with the entities listed on the attached Exhibit (the “Contracts and Leases to be Rejected”).

6. Until entry of an Order rejecting the certain executory contracts and unexpired leases, Debtor does not admit that such documents are, in fact, unexpired leases or executory contracts of the Debtor within the meaning of the Bankruptcy Code, and all rights with respect thereto are being expressly reserved.

7. During its bankruptcy, the Debtor conducted a review of its executory contracts and unexpired leases. As a result of that initiative, the Debtor has identified that the Contracts and Leases to be Rejected are not beneficial to the Debtor or to the Purchaser, and the Debtor believes, in its considered business judgment, that it will maximize the value of its assets if it is allowed to reject them.

REJECTION OF THE CONTRACTS AND LEASES TO BE REJECTED IS IN THE BEST INTERESTS OF THE DEBTOR, ITS ESTATE, AND CREDITORS

8. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession “subject to the court’s approval, may assume or reject any...executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The

standard applied to determine whether the assumption or rejection of an executory contract or unexpired lease should be authorized is the “business judgment” standard. Courts defer to a debtor’s business judgment in assuming an executory contract, and upon finding that a debtor has exercised its sound business judgment, approve the assumption or rejection under section 365(a) of the Bankruptcy Code. *See In re Penn Traffic Co.*, 524 F.3d 373, 383 (2nd Cir. 2008); *In re Old Carco LLC*, 406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009); *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (recognizing the “business judgment” standard used to approve assumption or rejection of executory contracts or unexpired leases).

9. The “business judgment” standard is not a strict standard; it requires only a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor’s estate. *See In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006).

10. As set forth above, the Debtor has determined that the Contracts and Leases to be Rejected are not beneficial to the Debtor or to the Purchaser.

11. In view of the foregoing, the Debtor respectfully requests that the Court approve the rejection of the Contracts and Leases to be Rejected pursuant to Section 365(a) of the Bankruptcy Code in the manner requested herein. Debtor requests in the proposed Order that the counterparty to the particular rejected Contracts and Leases to be Rejected will have 30 days from entry of an order authorizing rejection of that certain executory contract or unexpired lease to file a proof of claim or amend their claim.

12. Debtor requests that the contracts and unexpired leases set forth in the list of Contracts and Leases to be Rejected be rejected as of no later than the closing pursuant to the Debtor's sale motion (the "Closing"), unless Debtor or the Purchaser requests that certain contracts or unexpired leases be rejected as of a later date so long as the Purchaser funds any administrative expenses necessitated by the delay in the effective date of the rejection.

RESERVATION OF RIGHTS

13. Nothing contained herein is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtor; (ii) a waiver of the Debtor's or any appropriate party in interest's rights to dispute the amount of, basis for, or, validity of any claim against the Debtor; (iii) a waiver of any claims or causes of action that may exist against any creditor or interest holder; or (iv) an approval, assumption, or adoption, of any agreement, contract, program, policy, or lease between the Debtor and any third party under Section 365 of the Bankruptcy Code other than as set forth in this Motion, subject to entry of the Proposed Order.

NOTICE

14. Notice of this Motion will be provided to (i) the Office of the United States Trustee; (ii) the holders of the 20 largest unsecured claims against the Debtor; (iii) the Official Committee of Unsecured Creditors (iv) the counterparty to the Contracts and Unexpired Leases to be Rejected or their counsel of record, (v) Auxo Investment Partners, LLC through counsel, (vi) any parties requesting notices in this case and counsel of record, (vii) all creditors or their counsel known to the

Debtor to have asserted a lien (including a security interest), claim, right, interest or encumbrance of record against all or any portion of the Assets, and (viii) all parties who have expressed an interest in purchasing the Assets (the "Potential Bidders"). The Debtor submits that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided. The Debtor submits that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

15. No previous requests for the relief sought herein has been made by the Debtor to this or any other Court.

WHEREFORE the Debtor respectfully requests entry of an order granting the relief requested herein and such other and further relief as is just.

Respectfully submitted,

/s/ Robert Bassel

Robert Bassel (P48420)

Counsel for Debtor

PO Box T

Clinton, MI 49236

248.677.1234

bbassel@gmail.com

Dated: July 10, 2023

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN**

In the Matter of:

ARK LABORATORY, LLC,

Debtor.

Case No. 23-43403-mlo

Chapter 11

Hon, Maria L. Oxholm

**ORDER GRANTING MOTION OF DEBTOR TO REJECT CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND FOR
RELATED RELIEF**

Upon the motion (the “**Motion**”)¹ of Debtor and Debtor-in-Possession in the above-captioned Chapter 11 case (the “**Debtor**”), pursuant to § 365 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 6006 of the Federal Rules of Bankruptcy Procedure, for entry of an order (i) authorizing the Debtor to reject certain executory contracts and unexpired leases, and (ii) granting related relief, all as more fully set forth in the Motion; and due and proper notice of the relief requested in the Motion having been given as provided in the Motion; and upon the record of the Hearing, and upon all of the proceedings had before the Court, there being no unresolved objections; and the Court having determined that the cause exists for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth in this Order.
-

¹ References in this Order to terms not defined in this Order shall have the meanings set forth in the underlying Motion.

2. The Contracts and Leases to be Rejected as defined in the Motion, are hereby rejected as of no later than the Closing absent Debtor or the Purchaser designating in a filing that certain contracts or unexpired leases be rejected as of a later date so long as the Purchaser funds any administrative expenses necessitated by the delay in the effective date of the rejection.

3. The counterparty to that particular rejected Contracts and Leases to be Rejected will have 30 days from entry of an order authorizing rejection of that certain executory contract or unexpired lease to file a proof of claim or amend their claim.

4. Nothing contained in the Motion or this Order or any payment made pursuant to the authority granted by this Order is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtor; (ii) a waiver of the Debtor's or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtor; or (iii) a waiver of any claims or causes of action that may exist against any creditor or interest holder.

5. The Debtor is authorized to take any and all action necessary to effectuate the relief granted in this Order.

6. This Court shall retain jurisdiction to interpret and enforce this Order and enter such further Orders necessary to effectuate the terms of this Order.

7. This Order shall be effective immediately, notwithstanding any procedural provision in the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, the relevant local rules or otherwise.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN**

In the Matter of:

ARK LABORATORY, LLC,

Debtor.

Case No. 23-43403-mlo

Chapter 11

Hon, Maria L. Oxholm

**NOTICE OF MOTION OF DEBTOR TO REJECT CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND FOR RELATED RELIEF**

Debtor and Debtor-in-Possession in the above-captioned Chapter 11 case filed a motion to reject certain executory contracts and unexpired leases that Debtor no longer needs. Any counterparty to an unexpired lease or executory contract that is proposed to be rejected will have the right to object to the relief requested in the Motion to Reject within 14 days of service of the Motion to Reject (plus an additional 3 days if served by mail). Note that if the Court allows rejection of a particular executory contract or unexpired lease, the counterparty to that particular executory contract or unexpired lease will then have 30 days from entry of the order authorizing rejection of that certain executory contract or unexpired lease to file a proof of claim or amend their claim.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the motion, or if you want the Court to consider your views on the motion, then on or before 14 days from the date of service of the motion and this notice, unless shortened by the Court, you or your attorney must:

File with the Court a written objection or request for a hearing at:²¹

U.S. Bankruptcy Court
211 West Fort Street
Detroit, Michigan 48226

²¹Objection or request for a hearing must comply with F.R. Civ. P. 8(b), (c) and (e).

If you mail your objection or request for a hearing to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the 14 day period expires. All attorneys are required to file pleadings electronically.

You must also mail a copy to undersigned counsel whose address is below:

If an objection or request for hearing is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time, and location of the hearing.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Respectfully submitted,

/s/ Robert Bassel

Robert Bassel (P48420)

Attorney for Debtor

PO Box T

Clinton, MI 49236

248.677.1234

bbassel@gmail.co

Dated: July 10, 2023

Lessor Name and Address	Purpose (Reason for contract)
Abbott Laboratories INC., D-943, CP1-4 100 Abbott Park Road Abbott Park, Illinois 60064-6095	IMS Software - Ordering System for Reagents (Serial RLQYY-58664)
Allscripts 305 Church at North Hills St Raleigh, NC 27609	EMR Interface
Amazing Charts 1600 Division Rd, Suite 2000 West Warwick, RI 02893	EMR Interface
Arkstone Medical Solutions, LLC 7000 W Palmetto Park Road Boca Raton, FL 33433	Molecular Reports
Atlassian, Inc. 350 Bush St. Floor 13 San Francisco, CA 94104	Information Technology Software
Bio-Rad 2000 Alfred Nobel Drive Hercules, CA 94547	Bio-rad Unity Software and Unity Connect
Comcast Business Agreement 5728 Schaefer Rd. Ste 203 Dearborn MI 48126	Internet for Dearborn Drawstation
Comcast Business Agreement 6620 Highland Rd. STE 200 Waterford MI 48327	Internet for Lab Building
Data Innovations, LLC PO Box 101978 Atlanta, GA 30392-1978	EP Evaluator Software - for COLA requirements (License SUB-0017828)
Ellkay, LLC 200 Riverfront Blvd., 3rd Floor Elmwood Park, NJ 07407	EMR Interface
eMDs, Inc. 10901 Stonelake Blvd #200 Austin, TX 10901	EMR Interface
LabSoft Inc. 2202 Westshore Blvd. Ste 115 Tampa, FL 33607	EMR Interface
Lifepoint Informatics 65 Harristown Rd. Glen Rock, NJ 07452	EMR Interface Middleware
Medent Lab Clearinghouse Interface 15 Hulbert St. P.O. Box 980 Auburn, NY 13021	EMR Interface

Lessor Name and Address	Purpose (Reason for contract)
Microsoft Corporation One Microsoft Way Redmond, WA 98052	Office Software/Interfaces
Netalytics, LLC 52 Bobo St. Greer, SC 29650	EMR Interface

701 Congressional Blvd. Ste 360 Carmel, IN 46032	Service Level Agreement (SLA)/ System Administration
Translational Software Incorporated 7683 SE 27th Street #352 Mercer Island, WA 98040	Pgx Reports
Triarq Health 424 E 4th Street Royal Oak, MI 48067	EMR Interface

Lessor Name and Address	Purpose (Reason for contract)
Dr. Fredric Neumann Sr. 39880 VanDyke Rd Sterling Heights, MI 48313	Collection Lease
Easter Seals listed but has not been paid since Sept. 2022	
Little Sonia Real Estate LLC 9171 Lapeer Road, Suite 100, Davison MI 48423	Collection Lease

Newbsknob, LLC 6310 Sashabaw Rd. Clarkston, MI 48346	Collection lease
Younis Enterprises 5728 Schaefer Rd. Dearborn MI 48126	Collection Lease

Lessor Name and Address	Purpose (Reason for contract)
AB SCIEX LLC 1201 Radio Rd REDWOOD CITY, CA 94065-1217	SciEx UT1 Service (BJ27141507)
AB SCIEX LLC 1201 Radio Rd REDWOOD CITY, CA 94065-1218	SciEx UT2 Service (BB214211608)
AB SCIEX LLC 1201 Radio Rd REDWOOD CITY, CA 94065-1219	SciEx UT3 Service (AU20440906?)
AB SCIEX LLC 1201 Radio Rd REDWOOD CITY, CA 94065-1220	SciEx UT4 Service (AU10870902)
AB SCIEX LLC 1201 Radio Rd REDWOOD CITY, CA 94065-1221	SciEx UT5 Service (AU215091405)
AB SCIEX LLC 1201 Radio Rd REDWOOD CITY, CA 94065-1222	SciEx UT6 Service (BI25161411)
AB SCIEX LLC 1201 Radio Rd REDWOOD CITY, CA 94065-1223	SciEx UT7 Service (BB24521208)
AB SCIEX LLC 1201 Radio Rd REDWOOD CITY, CA 94065-1224	SciEx UT8 Service (
Abbott Clinical Lab Solutions 5990 142nd Ave. N Clearwater, FL 33760	Immunalysis Reagents on AU680
Abbott Laboratories INC., D-942, CP1-4 100 Abbott Park Road Abbott Park, Illinois 60064-6095	Alinity c Service (AC03064)
Abbott Laboratories INC., D-942, CP1-4 100 Abbott Park Road Abbott Park, Illinois 60064-6095	Alinity i Service (2 instruments, AI21541 and AI03890)
Abbott Laboratories INC., D-942, CP1-4 100 Abbott Park Road Abbott Park, Illinois 60064-6095	Architect c8000 Service (C804864)
Abbott Laboratories INC., D-942, CP1-4 100 Abbott Park Road Abbott Park, Illinois 60064-6095	Abbott Master Agreement (Reagents and Consumables)
Abbott Laboratories, Inc., 1300 East Touhy Avenue, Des Plaines, IL. 60018	Alinity m Master Agreement
Agena Bioscience, 4755 Eastgate Mall, San Diego, CA 92121	Service Agreement: PR20031657
Beckman Coulter INC. Mail Stop A2-SW-12 250 South Kraemer Blvd P.O. Box 8000 Brea, CA 92822-8000	Beckman Coulter AU680 Service (2014103536, 7982698)
Evoqua Water Technologies 1451 East 9 Mile Road Hazel Park, MI 48030	Service for Medica 120 Unit, Media 60 Unit and Flex 90 Unit
Leasing Associates of Barrington, Inc. 220 North River Street, East Dundee, IL. 60118	Sysmex UN-3000 Lease
Life Technologies Corporation, 5781 Van Allen Way Carlsbad, CA 92008	Quantstudio 5 Service Agreement
Med Water Systems, 2262 South 1200 West Suite 101, Woods Cross, UT. 84087	MW90 (HP) Lease

Microgenics Corporation 46500 Kato Road, Fremont, CA 94538	Thermo/Microgenics Reagents
Siemens Healthcare Diagnostics, Inc. 2089 Gregson Drive, Cary, NC. 27511	Sysmex CA-620 and CA-660 Service Agreement
Sysmex America, Inc., 577 Aptakisic Road, Lincolnshire, IL. 60069	Sysmex XN-550 Service Agreement
Sysmex America, Inc., 577 Aptakisic Road, Lincolnshire, IL. 60069	Sysmex UN-3000 Service Agreement

Lessor Name and Address	Purpose (Reason for contract)
Amro Almradi MDPC PLLC 612 Deauville Ln. Bloomfield Hills, MI 48304	Laboratory Medical Director
Avairis	IT Interface Consultant
The Sports Marketing Agency	Laboratory Marketing Agreement

Lessor Name and Address	Purpose (Reason for contract)
Cintas	Lab Coats and Rugs
Cintas Fire Protection Services	Fire Protection
Clarity X	Referral Lab Agreement
CoreBioLabs	Referral Lab Agreement
Great Lakes Express Delivery LLC	Courier Transport services
iCare	Remote Temperature monitoring systems
iOpen 1101 Pennsylvania Avenue, NW Washington DC 20004	Marketing Services Agreement
Iron Mountain 1101 Enterprise Dr. Royersford, PA 19468	Document Storage
Lab Path Consulting	Compliance Consulting
LabCorp 531 South Spring Street Burlington, North Carolina 27215	Reference Laboratory
McLaren Medical Laboratory 4000 S. Saginaw St. Flint MI 48507	Reference Laboratory Agreement

Solaris 110 Dewey Dr. Suite A, Nicholasville, Kentucky 40356	Reference Laboratory
Stericycle	Liquid Waste Removal
Superior Medical Waste Disposal LLC P.O. BOx 700797 Plymouth, MI 48170	Biohazard Waste Removal
UPS	Transportation Agreement